MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO. 981 OF 1996

KISHOR GOVINDJI H.U.F. .. PLAINTIFFS

Vs.

MALBAR OIL MARKETING CO. .. DEFENDANTS

Mr. Kaushik Kothari for plaintiff

Ms. Meenal Dighe i/b Vinod Mistry & Co. for defendants

CORAM: **SMT. RANJANA DESAI, J.**

DATE: AUGUST 17, 2007.

P.C.

. This suit is on my board under the caption "Uundefended Suits for ex parte decree". The learned counsel for the plaintiffs has tendered in the court affidavit of evidence dated 17/8/2007 in lieu of examination-in-chief of the plaintiffs. The affidavit is sworn by Shri Kishor Govindji Thakkar, Manager and Karta of the plaintiffs, who is present in the court today. The said affidavit is marked "X". Compilation of documents on which the plaintiffs have placed reliance along with a list thereof is also tendered in the court. It is taken on record and marked "Y (Colly.)".

2. Suit is filed under Order XXXVII Rule 2 of the Code of Civil Procedure. The case of the plaintiffs as per the averments in the plaint and the affidavit of evidence appears to be that the plaintiffs had advanced friendly loan of Rs.1 lac to the defendants which the defendants agreed to pay to the plaintiffs together with interest thereon @ Rs.1.50% per month i.e. 18% per annum. The defendants had executed a writing dated 1/2/91 whereby the defendants promised to pay principal amount of Rs.1 lac to the plaintiffs on demand with interest as aforesaid. The original of the said writing dated 1/2/91 being the demand promissory note dated 1/2/91 is produced in the court. It is marked Exh.-"A".

3. According to the plaintiffs, the defendants paid to the plaintiffs interest on the aforesaid principal amount of Rs.1 lac at the agreed rate of 18% per annum for the period upto 31/12/91. The defendants failed and neglected to pay any further amount by way of interest to the plaintiffs. The plaintiffs thereupon demanded repayment of the principal amount of Rs.1 lac from the defendants together with due interest thereon. However, the

defendants failed and neglected to pay any amount to the plaintiffs despite the plaintiffs' repeated oral requests and demands. The plaintiffs by their advocate's notice of demand dated 15/7/94 called upon the defendants to pay the entire dues of the plaintiffs. The said demand notice was sent to the defendants by registered post A.D. It was received by the defendants on 28/7/94. The office copy of the plaintiffs' advocate's notice of demand dated 15/7/94 along with the A.D. card is produced in the court. They are marked Exh. "B" (Colly.).

4. In reply to the plaintiffs' advocate's notice of demand dated 15/7/94, the defendants by their letter dated 14/10/94 addressed to the defendants admitted and acknowledged their liability to pay the dues of the plaintiffs as demanded, but the defendants pleaded their inability to immediately pay any amount to the plaintiffs on account of their financial constraints. However, by their said letter in reply the defendants agreed and promised to pay and clear the entire dues of the plaintiffs by the end of December, 1995. The original of the said letter dated 14/10/94 is also produced in the court by the plaintiffs. It is marked Exh. "C".

5. It is the case of the plaintiffs that notwithstanding their aforesaid promise to pay as contained in their letter dated 14/10/94 addressed to the plaintiffs, the defendants failed and neglected to pay any amount whatsoever to the plaintiffs. The defendants have thus failed and neglected to pay and clear the plaintiffs' dues.

6. The case of the plaintiffs, therefore, is that there is due and payable by the defendants to the plaintiffs, the principal amount of Rs.1,00,000/- as also an amount of Rs.72,000/- being the agreed interest payable thereon by the defendants to the plaintiffs @ 18% per annum. The particulars of the said claim are set out in Exhibit "D" to the plaint.

7. It is in these circumstances that the plaintiffs have filed this suit against the defendants for recovery of the said amount together with interest on the principal amount of Rs.1,00,000/- at the agreed rate of 18% per annum from 1/1/96 till the date of payment.

8. In this suit by order dated 12/8/97 this court

had granted conditional leave to the defendants to defend the suit and directed the defendants to deposit a sum of Rs.1,25,000/- in the court within six weeks from the date of order and further directed the defendants to file written statement within six weeks. The defendants have deposited Rs.1,25,000/-. They have failed to file their written statement and, therefore, this court directed the suit to be placed under the caption "Undefended Suits for ex parte decree".

9. The claim of the plaintiffs contained in the plaint has been duly proved by the affidavit of Shri Kishor Govindji Thakkar. Similarly all the documents on which reliance is placed have been tendered in the court and proved by the deponent of the said affidavit. The learned counsel for the defendants states that she has no instructions from the defendants.

10. In the circumstances since there is no contest by the defendants, in my opinion the plaintiffs are entitled to a decree in terms of prayer (a) of the plaint with modification as regards rate of interest from the date of suit till payment.

11. I am informed that the amount which is deposited by the defendants in this court has been invested by the Prothonotary & Senior Master in a nationalized bank. Needless to say that the said amount along with the accrued interest thereon will be adjusted towards the amount which the plaintiffs are entitled to get from the defendants under this decree.

12. In the circumstances, the suit is decreed in terms of prayer clause (a) of the plaint with a modification as regards rate of interest i.e. the plaintiffs will be entitled to further interest on the principal sum of Rs.1,00,000/- at the rate of 18% per annum from the date of filing of the suit till the date of decree and further interest at the rate of 8% per annum from the date of decree till the date of payment.

13. The plaintiffs will be entitled to refund of court fees, if any asper rules.

14. Suit is disposed of.

JUDGE.